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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO 326/2015**

VIRENDERA KUMAR BHARDWAJ Appellant
Through: Dr. Maj. J.C. Vasisht, Adv.

versus

SURJEET KAUR & ANR Respondents
Through

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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19.10.2015

1. This is an appeal directed against order dated 03.06.2015. By virtue of the impugned order, the trial court has dismissed the application of the appellant/ plaintiff under Order 39 Rule 1 & 2 of the CPC. The facts, as set out in the impugned order, disclose that, it appears that the appellant/ plaintiff had entered into an agreement to sell with respondent no.1/ defendant no.1, and her husband, namely, Mr Baldev Singh. The agreement to sell, I am informed, is dated 02.07.2008.

2. I am further informed by the counsel for the appellant/ plaintiff, a fact which is also evident on a reading of the impugned order, that it dealt with two properties. These properties are described as: property bearing no. 1/228, located in Khasra no. 420-421 and property bearing no. 1/222, located in Khasra No. 420. Both properties are situated at Shri Ram Nagar, Shahdara, Delhi-110 032. Property No. 1/228, admeasures 22 sq. yds.; while property bearing no. 1/222, admeasures 10 sq. yds. The suit from which the instant appeal has arisen relates to property no. 1/222 (hereafter

referred to as the suit property).

3. It is conceded before me, in so far as property no. 1/228 is concerned, that the transaction has been effectuated with the husband of respondent no.1/ defendant no.1. The dispute, as indicated above, pertains only to the suit property i.e. property no. 1/222.

3.1 The learned trial Judge has primarily dismissed the appellant's/ plaintiff's application for grant of interim relief on the ground that a document dated 02.10.2008 was executed by him, whereby it was indicated that the appellant/ plaintiff was interested only in buying property no. 1/228, and that, he wanted to cancel the agreement to sell qua the suit property.

3.2 The trial court has noted that it is the case of the appellant/ plaintiff that the said document was signed under threat of the husband and son of respondent no.1/ defendant no.1. The trial court further notes, that no complaint of the alleged threat has been instituted by the appellant/ plaintiff.

3.3 This fact is not disputed by the counsel for the appellant/ plaintiff.

4. Furthermore, the trial court notes that the appellant/ plaintiff has not clarified as to why the amount paid as earnest money, in respect of the suit property, was adjusted against the sale of property bearing no. 1/228.

5. To be noted, the suit property has been purchased by respondent no.2/ defendant no.2. The trial court has noted that the instant suit has been filed on 20.12.2013.

5.1 Learned counsel for the appellant/ plaintiff says that the suit in the instant case was filed, in the first instance, before the Civil Judge, wherein an interim order was passed in favour of the appellant/ plaintiff, which is, dated 07.09.2011.

5.2 It is the case of the appellant/ plaintiff that the plaint was returned to

him, on 19.11.2011, by the concerned court, on account of lack of pecuniary jurisdiction. It appears that, thereafter, the instant suit was presented before the Addl. District Judge, on 20.02.2013 after considerable delay. Having regard to the fact that it is a quia timet action, the appellant should have approached the appropriate court at the earliest.

6. Having regard to the observations of the learned Trial Court in the impugned order, I am of the view that the impugned order is neither arbitrary nor perverse. The appeal before this court can only be an appeal on principle. It is not shown that trial court has failed to follow the well accepted principles for coming to a conclusion as to whether or not injunction ought to be granted. Merely because this court may reach a different conclusion, that by itself does not call for interference with the impugned order. [See *Wander Ltd. & Anr. vs Antox India (P) Ltd. 1990 Supp. SCC 727*]

7. The appeal is, accordingly, dismissed.

RAJIV SHAKDHER, J

OCTOBER 19, 2015

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